We would add the present case is clearly one which comes within the provisions of Order 18 rule 17 which provides as follows: —

"Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim."

We accordingly allow the appeal and grant unconditional leave to the defendants to defend the whole of the plaintiffs' claim. The costs of this appeal and of the proceedings in the court below should be costs in the cause.

Appeal allowed.

Solicitors: *Shook Lin & Bok; David Marshall.*

RAMACHANDRAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) September 21, 1972]

[Singapore — Magistrate's Appeal No. 74 of 1971]

Criminal Law and Procedure — Charge — "Rolled-up" charge incorporating two distinct offences — Bad for duplicity — Curable where there is no failure of justice — Criminal Procedure Code (Cap. 113, 1970 Ed.), ss. 161 and 382.

Evidence — Accomplice evidence — Evidence of one accomplice accepted as corroboration — Effect of — Non-accomplice corroboration in material particulars required.

This was an appeal by the appellant against conviction on a charge under section 6(a) of the Prevention of Corruption Ordinance 1960, of corruptly obtaining from one Sathan, for himself a gratification of a sum of $100 as a reward for forbearing to do an act in relation to his principal's affairs to wit, to put up a detention case under the Criminal Law (Temporary Provisions) Ordinance against the said Sathan, and to take action against one Palanichamy to be sent to India.

One of the main grounds of appeal was that the charge was bad for duplicity. It was submitted that in this case two distinct offences were rolled up into one charge in contravention of statutory provisions and that the charge was unlawful and therefore void. As a result, two points arose for consideration: (1) whether the charge was bad for duplicity, and (2) if there was duplicity, whether it was an irregularity which could be cured under section 382 of the Criminal Procedure Code, or was it an irregularity which could only result in the conviction being quashed.

Another point taken on appeal was that the learned district judge erred in law in holding that Sathan was not an accomplice and in holding that the evidence of Palanichamy, an admitted accomplice, was substantially corroborated by Sathan when Sathan was himself an accomplice and was thus incapable of corroborating the evidence of another accomplice.

Held, allowing the appeal: (1) in the circumstances of this case, there were two distinct offences combined in a single charge; though they were similar offences each offence should have been the subject of a separate charge and tried together. The charge constituted an irregularity which was curable unless it could be shown that there had been a failure of justice. In the present case, the court was satisfied that the irregularity had occassioned no failure of justice;

(2) on the facts of this case, Sathan could not but be regarded as an accomplice, and his evidence needed corroboration in material particulars. Since the learned district judge had accepted his evidence as corroborative which was not in law corroborative evidence, the conviction must be quashed.

Cases referred to:-

(1) *Chunnoo* v. *State* A.I.R. 1954 All. 795 at p. 797.

(2) *Banwarilal* v. *Union of India* A.I.R. 1963 S.C. 1620 at p. 1624.

(3) *Davis* v. *Director of Public Prosecution* [1954] A.C. 378 at p. 400.

MAGISTRATE'S CRIMINAL APPEAL

Dato' David Marshall for the appellants.

Glenn Knight (Deputy Public Prosecutor) for the respondent.

Chua J.: This appeal is against the appellant's conviction in the District Court on the following charge:

"That he, on or about the 8th day of January, 1971 at about 8.45 p.m., outside the Beach Road Police Station, Beach Road, Singapore, being an agent, to wit, a Detective Police Constable bearing number 2783 employed by the Police Republik Singapore, corruptly obtained from one Sathan Periak Aruppan for himself a gratification of a sum of one hundred dollars ($100), as a reward for forbearing to do an act in relation to his principal's affairs to wit, to put up a detention case under the Criminal Law (Temporary Provisions) Ordinance against the said Sathan Periak Aruppan and to take action against one Palanichamy Sooruli to be sent to India, and he had thereby committed an offence punishable under Section 6(a) of the Prevention of Corruption Ordinance, 1960 (No. 39 of 1960; Reprint No. RS (A) 27 of 1966)."

The prosecution evidence is shortly this. Sathan Periak Aruppan (hereinafter referred to as "Sathan") is a grass cutter employed in the anti-malarial unit of the Public Health Department. He earned extra money by washing motor cars at No. 24 Tomlinson Road, a block of flats. S. Nadeson, a mandore working also in the anti-malarial unit of the Public Health Department, was given a contract to clean the flats at No. 24 Tomlinson Road. A dispute arose between Sathan and Nadeson over the washing of the motor cars at No. 24 Tomlinson Road. On the 13th July, 1970, Sathan wrote a letter to the Commissioner of Police alleging that Nadeson had engaged gangsters to assault him. Sathan was called for by the C.I.D. and he went there on the 3rd August, 1970, and he was seen by the appellant who recorded a statement from him. Appellant then told Sathan to go home and said that he would visit him in a day or two.

About twelve days later Sathan went to the C.I.D. He met the appellant at a bus stop in Robinson Road near the C.I.D. They adjourned to a nearby coffee shop and later they went into the C.I.D. There the appellant informed Sathan that the persons he had named in his letter to the Commissioner of Police had been questioned and it appeared that he had made a false complaint. The appellant then asked if Sathan knew one Thamby Kechil who he wished to question. When Sathan replied in the affirmative the appellant asked Sathan to take him there. Sathan then took the appellant to Thamby Kechil's house. The appellant went into Thamby Kechil's house and came out a few minutes later. Sathan then took the appellant to the police quarters at Beach Road Police Station where the appellant pointed out his quarters. The appellant told Sathan that he had helped other people and he was willing to help Sathan if he was given some money. Sathan told the appellant that he was in a difficult position as he had a lot of expenses to meet as Deepa-

vali was approaching and added that he would give the appellant something when he could draw his money out of his tontine towards the end of the year.

On the 1st or 2nd September, 1970, Sathan went to see the appellant at the C.I.D., as according to him, some gangsters had threatened him. He met the appellant at the C.I.D. car park and told him of the threats. The appellant replied that these things were bound to happen if instead of seeing him, Sathan kept writing to higher authorities and added that these things need not happen if Sathan had listened to him. When Sathan replied that he was prepared to listen to him, the appellant said: "About the money matter you are just keeping quiet". Sathan then asked him how much he wanted and the appellant took out a piece of paper from his shirt pocket and wrote on it "$200" and handed it to Sathan who said that $200 was too much and offered to give $25 whereupon the appellant replied: "If you want to give, give $200. If not, whatever trouble comes to you is your matter".

On 4th September, 1970, Palanichamy, a friend of Sathan working as a labourer in the anti-malarial unit of the Public Health Department and who was helping Sathan to wash motor cars at No. 24 Tomlinson Road, sent a letter to the Commissioner of Police complaining that Nadeson had sent gangsters to threaten him.

Palanichamy received a letter dated the 5th September, 1970, from the Commissioner of Police informing him that his letter had been forwarded to the officer-in-charge of "E" Division, Orchard Road Police Station, for action. Palanichamy and Sathan went to see one David Anthony, Sathan's friend to ask the latter to translate the letter. Anthony then suggested that they see the appellant whom he knew.

The following day Sathan and Anthony went to the appellant's quarters in the morning but the appellant was not at home. The next day Sathan obtained $10 from Palanichamy and with his $10 he handed $20 to Anthony and in the evening he and Anthony again went to the appellant's quarters and they took the appellant to a nearby coffee shop where they had some beer. The appellant was shown the letter from the Commissioner of Police. The appellant said that Nadeson had friends at Orchard Road Police Station and that Nadeson could get the help of the officer-in-charge of the Orchard Road Police Station and the appellant's officer-in-charge to put both Sathan and Palanichamy in detention under section 55. The appellant added that both Sathan and Palanichamy were in for a lot of trouble and that if they want to avoid it they would have to give him $200. Sathan replied that he had to consult Palanichamy before he could give an answer. After that the three of them went to another coffee shop where they had some more beer. At both coffee shops Anthony settled the bills from the $20 given to him earlier. Later that evening Sathan and Anthony went to see Palanichamy who was informed of the appellant's demand for $200. Palanichamy said that he would have to think about it. The following day Sathan and Palanichamy discussed the matter and decided not to give the $200 demanded by the appellant.

Nothing more happened after the first week in September until January, 1971. On the 18th November, 1970, Nadeson wrote to the Assistant Commissioner, C.I.D., complaining that Sathan had been to his house to demand money and had passed obscene remarks at members of his family in the streets; that Sathan and Palanichamy had attempted to assault his son towards the end of August, 1970; that on the 7th November, 1970, Sathan had demanded money and when he refused Sathan had threatened to beat him up.

On the 6th January, 1971, the appellant received a letter from the C.I.D. asking him to call at the C.I.D. at 2 p.m. that day. He went to see Palanichamy and discussed this letter and they came to the conclusion that there was some collusion between the appellant and Nadeson. Sathan felt, in view of the earlier demands for money, that this letter was a prelude to more demands by the appellant so he decided to go and report to the Corrupt Practices Investigation Bureau but he did not inform Palanichamy of his intention.

Sathan went to the C.P.I.B. at 9 a.m. that day where he gave a statement to special investigator Choo Pheng Khai who instructed him to go to the C.I.D. at 2 p.m. and that if the appellant asked for money he should agree to give it but he was told not to offer money to him.

That afternoon Sathan went to the C.I.D. and saw the appellant who recorded a statement from him. The appellant told him that Nadeson had made a complaint against him and the C.I.D. was investigating. The appellant also said that his officer-in-charge had written to the Orchard Road Police Station for the files on Sathan and Palanichamy; that the reports put up by two detectives and an Inspector were against Sathan and Palanichamy but were in favour of Nadeson; that Nadeson had made a lot of allegations against Sathan and Palanichamy and his officer-in-charge was very angry. The appellant then took out a file and showed Sathan a lot of red marks therein against him. The appellant then asked Sathan if he knew about section 55 under which he could be detained without trial indefinitely. The appellant added that the trouble Sathan was facing was minor compared with the trouble in store for Palanichamy. Sathan was frightened and told the appellant not to believe the allegations made against him and Palanichamy and asked for his help. The appellant replied that he had asked Sathan for $200 to settle Palanichamy's and his affairs but they had played him out. He added that he would still be prepared to help them if they paid him $100 each. Sathan replied that he could not speak for Palanichamy but he was prepared to pay him $50. The appellant asked if he had brought the money and Sathan replied in the negative adding that he would have the money the following day which was his pay day. The appellant then said that he would make an appointment for Sathan to see him on the 8th January at 2 p.m. at the C.I.D. and that Sathan should put the money in a cigarette packet when he came and the appellant would take the money as he was recording Sathan's statement.

That evening Sathan telephoned Special Investigator Choo and told him what had happened at the C.I.D. After that he met Palanichamy at Tomlinson Road and told him about his visit to the C.I.D. that afternoon but he did not tell him of his visit to the C.P.I.B. that morning. While they were washing motor cars the appellant arrived at Tomlinson Road at 8 p.m. and gave Palanichamy a letter and told him that he was to go to the C.I.D. the following day. Palanichamy asked why he had to go to the C.I.D. as he had not committed any offence. The appellant said: "I asked your friend to give me $100 but he has agreed to give me $50. Why don't you give me $100?" Palanichamy replied that he would give him $50. The appellant then told Sathan not to bring any money to the C.I.D. on the 8th January, 1971, and that he would tell him at that time when to bring the money.

On the 7th January, 1971, Sathan telephoned the C.P.I.B. and he was told to go to the C.P.I.B. that afternoon. At about noon that day Sathan met Palanichamy who gave him $50 to be given to the appellant. At about 2 p.m. Sathan went to the C.P.I.B. and told Special Investigator Choo what had taken place at 8 p.m. the previous day. Special Investigator Choo asked Sathan to bring Palanichamy to the C.P.I.B. but Sathan said that he would not do so as Palanichamy was nervous and could not keep a secret.

Palanichamy went to the C.I.D. as requested on the 7th January, 1971, at about 3 p.m. There he met the appellant who recorded his statement. The appellant threatened Palanichamy and suggested that Palanichamy and Sathan should stop washing motor cars at Tomlinson Road otherwise Nadeson would continue to write petitions and Sathan would be detained under section 55 and Palanichamy's blue identity card and work permit would be taken away and he would be sent back to India. The appellant said: "Last time I asked you and your friend for $200 each. You both played me out. This time you can't play me out. You must definitely pay money this time." The appellant then told Palanichamy to see him again on the 8th January, 1971.

On the 8th January, 1971, Sathan went to the C.I.D. at 2.30 p.m. Shortly after Palanichamy arrived there. The appellant told Palanichamy that he and Sathan were to meet him at 8.30 p.m. that night outside his quarters near Beach Road Police Station and to bring the money. After this Sathan and Palanichamy were brought by the appellant to see A.S.P. Sundrum and they were told to call back at the C.I.D. on the 11th January, 1971, at 2.30 p.m.

Sathan then met Special Investigator Choo to whom he handed the five $10 notes which he had received from Palanichamy. The serial numbers of these notes were noted down. Special Investigator Choo then handed back the five $10 notes together with a $50 note of the C.P.I.B. (the serial number having been noted) to Sathan who was instructed to keep the appointment with the appellant and to hand over the money only if the appellant asked for it.

At 8.25 p.m. that night Sathan and Palanichamy went to wait at the side gate of the Beach Road Police Station. A few minutes later the appellant came. The appellant then asked if they had brought the money and when they replied in the affirmative he asked how much they had brought. Sathan and Palanichamy replied: "As agreed $50 each". Then Sathan took out the money and handed it to Palanichamy and when the appellant saw this he asked: "Do you know what help I am going to give you for this money?" Sathan replied: "I do not know. You'd better explain". The appellant said that for the money they were paying that day he would not place Sathan under section 55 and would not send Palanichamy away to India. Sathan then took the money from Palanichamy and gave it to the appellant who took it and walked away. Sathan then gave the pre-arranged signal to the C.P.I.B. officers who were around and went to his motor cycle with Palanichamy. The C.P.I.B. officers surrounded the appellant who had the $100 in his hand. The appellant was arrested.

One of the main grounds of appeal is that the charge is bad for duplicity. It is submitted that two distinct offences were rolled up into one charge in contravention of statutory provisions and that the charge was unlawful and therefore void.

Two points therefore arise, (1) whether the charge is bad for duplicity, and (2) if there was duplicity is that an irregularity which can be cured under section 382 of the Criminal Procedure Code or is it an irregularity which can only result in the conviction being quashed.

Section 161 of the Criminal Procedure Code provides:

"For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 162, 163, 165 and 169".

The learned deputy public prosecutor says that the demand for money by the appellant from Sathan and Palanichamy and the handing of the $100 to the appellant were interrelated and that this is not a case where the appellant took bribes from two persons on two different occasions. He submits that there is one distinct offence of obtaining $100 as a gratification for forbearing to do two acts.

In support of his submission he relies on two Indian cases. The first is the case of *Chunnoo* v. *State*,[1] where Kidwai J. said (at page 797): —

"(1) Section 233 Criminal Procedure Code (which is equivalent to section 161 of our Code) requires a separate charge to be framed and a separate trial to take place 'for every "distinct" offence of which a person is accused'. The use of the word 'distinct' is of great significance and the Legislature having inserted it, we must, so far as possible, give it a meaning and not treat it as redundant. 'Every distinct offence' cannot be treated as having the same meaning as 'every offence'. The only meaning that the word 'distinct' can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. If there is such a connection, one action is not 'distinct' from other actions and each of them, even if it constitutes an offence, does not constitute a 'distinct' offence."

The other case is *Banwarilal* v. *Union of India*[2] where Raghubar Dayal J. said (at page 1624): —

"(13) Section 233 Cr. P. C. reads:

'For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall

be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.'

The expression 'every distinct offence' must have a different content from the expressions 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence.

(14) The question is, what is meant by 'every distinct offence'? 'Distinct' means 'not identical'. It stresses characteristics that distinguish while the word 'separate' would stress the 'two things not being the same'. Two offences would be distinct if they be not in any way inter-related. If there be some inter-relation, there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offences or not."

It is correct, as the learned deputy says, that on the evidence of the prosecution, the appellant on the afternoon of the 6th January, 1971, told Sathan that he would help Sathan and Palanichamy if each of them would give him $100. But on that occasion Sathan said that he could not speak for Palanichamy but he himself would give $50. The evidence is also that at 8 p.m. that same day the appellant met Palanichamy and asked him for $100 and Palanichamy said he would give $50. The evidence is also that Palanichamy gave $50 to Sathan to be given to the appellant and that both Sathan and Palanichamy went to the meeting place where the $100 was handed to the appellant by Sathan. In those circumstances, I am of the view that there were two distinct offences namely (1) that the appellant corruptly obtained from Sathan a gratification of $50 as a reward for forbearing to put up a detention case under the Criminal Law (Temporary Provisions) Ordinance against Sathan and (2) that the appellant corruptly obtained from Palanichamy a gratification of $50 as a reward for forbearing to take action against Palanichamy to be sent to India.

The next point to consider is whether the duplicity in the charge is a mere irregularity which can be cured under section 382, or an illegality.

This is a case of two distinct offences combined in a single charge but they are similar offences and each offence could have been the subject of a separate charge and tried together. In my view in those circumstances it is an irregularity which is curable unless it can be shown that there has been a failure of justice. I am satisfied that in the present case the irregularity has occasioned no failure of justice.

The next main point taken on behalf of the appellant is that the learned district judge erred in law in holding that Sathan was not an accomplice and in holding that evidence of Palanichamy, an accomplice, is substantially corroborated by Sathan when Sathan was himself an accomplice and was thus incapable of corroborating the evidence of another accomplice.

The learned district judge did not give any reasons why he held that Sathan was not an accomplice. The learned deputy public prosecutor, however, submits that Sathan made himself an agent of the prosecution before the actual commission of the offence with which the appellant was charged and was therefore not an accomplice. He relies on *Davis* v. *Director of Public Prosecutions*,[3] where Lord Simonds, in delivering the judgment of the House of Lords, said (at page 400): —

"There is in the authorities no formal definition of the term 'accomplice': and your Lordships are forced to deduce a meaning for the word from the cases in which *X*, *Y* and *Z* have been held to be, or held liable to be treated as, accomplices. On the cases it would appear that the following persons, if called as witnesses for the prosecution, have been treated as falling within the category:—

(1) On any view, persons who are participis criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is surely the natural and primary meaning of the term 'accomplice'...."

In this case I am of the view that one should not look only at the facts as from the 6th January, 1971. The previous transactions, transactions prior to January, 1971, between Sathan and the appellant must also be looked at. If the evidence of Sathan was true he was quite prepared to bribe the appellant to assist him and in fact he offered to give the appellant a bribe in August 1970 and again on 1st or 2nd September, 1970, he offered the appellant $25 as a bribe when the appellant asked for $200. It is clear from Sathan's evidence that the help that the appellant was to give him then was not to put up a case against him under section 55 for him to be detained without trial. He took no steps to inform the C.P.I.B. then. When Sathan went to report to the C.P.I.B. on the 6th January, 1971, it was still in connection with his dispute with Nadeson. Right from the beginning Sathan offered various sums of money to the appellant at various intervals and subsequently on 6th January, 1971, he turned "agent provocateur". Sathan was a party from the beginning to the alleged criminal transaction.

I have no doubt that in view of those facts Sathan cannot but be regarded as an accomplice and his evidence needs corroboration in material particulars.

The learned deputy public prosecutor concedes that one accomplice cannot corroborate another.

The learned district judge had in this case accepted evidence as corroborative which was not in law corroborative evidence and therefore the conviction must be quashed.

Appeal allowed.

Conviction quashed.

Solicitors: *David Marshall.*